

**SPECIAL MEETING  
BOARD OF MAYOR AND ALDERMEN  
(ROAD HEARING)**

**April 17, 2006**

**5:30 PM**

Mayor Guinta called the meeting to order.

Mayor Guinta called for the Pledge of Allegiance, this function being led by Alderman Gatsas.

A moment of silent prayer was observed.

The Clerk called the roll.

Present: Aldermen Roy, Gatsas, Long, Duval, Osborne, Pinard, Lopez, Shea, DeVries, Garrity, Smith, Thibault and Forest

Absent: Alderman O'Neil

Mayor Guinta advised that the purpose of the road hearing is to hear those wishing to speak in favor of or in opposition to proposed street discontinuance petitions, followed by viewing the area of the petitions and determination of the action to be taken on such petitions. Such petitions shall be addressed at which time the Public Works Director shall be requested to make a presentation following which those wishing to speak in favor will be heard, followed by those wishing to speak in opposition. Anyone wishing to speak must first step to the nearest microphone when recognized and state his/her name and address in a clear, loud voice for the record. Each person will be given only one opportunity to speak and any questions must be directed to the Chair.

**A.**     *Petition to layout a portion of Lewis Street*

Mayor Guinta requested that Frank Thomas, Public Works Director, make a presentation.

Frank Thomas, Public Works Director, stated the first petition for consideration is Lewis Street. Lewis Street was originally dedicated on a plan in 1914. The easterly 400' portion of Lewis Street from Summerside Street was accepted by the City on June 27, 1941. The section of Lewis Street, which is the subject of this petition was constructed on or about 1964. The street has been opened to the public. It has public utilities and has been maintained by the City in all of that time. The actual petition is to accept 214.42' of Lewis Street from the previous acceptance of which 192.25' is paved and as I mentioned opened and maintained and the remaining 24.17' would be a sloping area at the end of the street that we would want for snow storage, etc. The Highway Department does support this layout petition because for all intents and purposes we have been treating it as a City street since the time it was built.

Mayor Guinta called for those wishing to speak in favor.

Nicholas Lazos, Manchester NH stated:

I am the attorney for the petitioner who is seeking to lay out the street. I think Mr. Thomas described the situation quite well and I have nothing further to add unless there are any questions.

Mayor Guinta calls for those wishing to speak in opposition.

There were none.

**TABLED ITEM**

On motion of Alderman Lopez, duly seconded by Alderman DeVries it was voted to remove this item from the table.

**B.     *Petition to discontinue a portion of Union East Back Street*  
(Tabled 12/19/2005)**

Mayor Guinta requested that Frank Thomas, Public Works Director, make a presentation.

Mr. Thomas stated this is a petition that you had considered once before and actually did a viewing. Union East Back Street was dedicated by a plan dated October 13, 1892. Because it was dedicated in 1892 it must be formally released and discharged by the Board of Mayor and Aldermen. The original dedication for this paper street was for a 20' wide roadway. This roadway was never opened, improved or utilized by the public. There is a 12" sewer that runs from Union Street to Walnut Street, which crosses the paper street in question. Any action by the Board of Mayor and Aldermen should be subject to reserving any and all utility access easements. The subject of this petition is for a section of this paper street 10' wide running from the southerly property line of the Draper property on Walnut Street northerly approximately 61'. It would appear that the abutting Union Street property owner or the property that is presently owned by the Meyers has acquired the other 10' portion of this paper street. The reason why I say that is in researching the deeds in 1957 a deed to a Mr. Desrochers did not include any of the paper street. A later deed in 1961 deeded to the Meyers included 10' of this paper street that was included in the deed. It is the Highway Department's recommendation that the Board of Mayor and Aldermen grant a release and discharge subject to reserving the utility access easements. It is our opinion that any issues dealing with exact location of property lines or encroachment into the area are matters between the two abutters.

Alderman DeVries asked Mr. Thomas the action that needs to be taken after the discontinuance through the courts would be what.

Mr. Thomas answered petitioning the court to quiet title.

Alderman DeVries asked and if that is not taken then the use of the land does not automatically...I mean that is the action that has to be followed to actually acquire the use of the land.

Mr. Thomas answered not necessarily. The abutters to that area do have certain rights to it more so than the City of Manchester because again we just had a right-of-way over that area. So the abutters do have a potential underlying title to the area and have the right to utilize it. The petitioning the court to a quiet title is basically that. To wind up with a legal document that states that you will own that portion of the paper street.

Alderman DeVries asked are you aware of whether or not that has already taken place on the 10' previously acquired.

Mr. Thomas answered it is included in the deed for that property. Now how that was acquired I don't know. All I know is that in our research an earlier deed didn't include it and a later deed did include half of that or a 10' section.

Alderman DeVries asked so if there are still questions between the abutters over those actions that becomes a civil matter and not one for the City correct.

Mr. Thomas answered that is correct. That is why I ended it...I finally recommended that the Board take the action to release and discharge because we really don't have any rights and now it is more or less a legal formality that we have to take that action and as far as the utilization of that property as I mentioned the encroachments here or there that would be up to the abutters.

Alderman Lopez stated just for clarification when you say you have to get to that 12' sewer area and need the right to get onto that property at any time could you clarify if we were to release this piece of land could a restriction be put on that no fence or structure be put on it.

Mr. Thomas responded yes. It would be subject to reserving a utility easement over the sewer. Something like a fence wouldn't be a problem to us but building any type of large structure would be. In fact, the sewer after it crosses this paper street does from what we can gather run under the garage of the abutting property.

Mayor Guinta called for those wishing to speak in favor.

Douglas Draper, 430 Walnut Street, Manchester stated:

I am the petitioner and, therefore, I am here to speak in favor of granting my petition. I want to acquire the undisputed legal right to this land that I need to maintain the back of my garage, which sits directly on the property line of this back street. I also want an undisputed legal right to maintain my fence, which has been in place for over 40 years and needs to be replaced. My fence, which is behind my garage, is only 5' out. All of my other neighbors along this 20' wide unused back street divided this piece right down the middle. They did so many years ago without dispute. I simply want to enjoy the same privilege that all of my neighbors enjoy. I respectfully ask that the City grant my request. Thank you very much.

Mayor Guinta called for those wishing to speak in opposition.

Thomas Meyers, 223 Ridge Road, Manchester stated:

Thank you Mayor and Aldermen for allowing me the opportunity to speak in opposition to this petition. Relative to this issue I am a member and representative to a group of family members who own the lot and property at 953 Union Street, which is also labeled 310-7 on the City's tax map. I have also been asked to speak on behalf of my sister, Cindy Meyers, the sole owner of her residence located next door at 949 Union Street labeled 310-8 on the map. We are two separate abutters to the petitioner and we have the same opinion. We are opposed to this petition. This is my third appearance before the Board regarding this matter. My intentions tonight are the same as the previous evenings. I wish to dismiss this petition without approval or to refer it back to the Community Improvement Committee for further investigation and dialogue. The petitioner seeks discontinuance of 612 square feet of land from the City of Manchester for his own gain. I am here to indicate the fact that the package presented to you by the petitioner is misleading and questionable and prohibits you from making a sound, reasonable, Solomon like decision at face value. I plan to point out these discrepancies. First and foremost, I question the legality of this road hearing. Nowhere in this package nor in our legal fee is there any reference or legal documentation that presents evidence that a road, either real or paper, or a right-of-way exists nor does it substantiate a claim that the City of Manchester actually owns this land. Now subsequent to the receipt of the petition package I had discussions with Alex Asselin and Tom Nichols of the Assessor's Office, as well as Marty Miccio from the Highway Department. They investigated this petition and could not find any evidence of ownership or easement rights having been given to the City of Manchester regarding the property being petitioned. On Page 7 of your package, the letter addressed to the Community Improvement Committee from Frank Thomas, the Public Works Director dated September 22 confirms this in writing within his second bullet item, which states and I quote "there are no acceptances or return of layout for Union East Back Street in the records of the City Clerk." There is a cloud of doubt on the actual title of this property that must be further investigated by the Board. I contend that Union East Back Street may not exist or could be privately owned and, therefore, it would not be within the Board's authority to approve this petition. Secondly, if proof has been

presented to the Board that the City of Manchester actually does, in fact, own this property then I will assert that it would be in the City's vital interest to retain all ownership and easement rights to it. Additionally, I counseled this Board that they would be setting precedent for considering a petition for discontinuance of any or all portions of Union East Back Street. I also caution this Board that an approval of this petition will trigger many more to follow. Now the petitioner has attempted to lead this Board to believe that a similar petition had been granted regarding a portion of the right-of-way at an earlier time without providing legal proof. Now I reference Page 4 of the package and the letter from Mr. Draper to the Community Improvement Committee dated 8/29 where I specifically reference paragraphs 3 and 4 where he states "my neighbors at 953 Union Street have already acquired 10' of the City owned 20' right-of-way and I wish to acquire the other 10' that abuts my property. Enclosed is also a copy of a map entitled "Private Land Sewage" dated January 24, 1923. This map indicates that on that date the 20' City owned right-of-way separating my property at 432-430 Walnut Street and my neighbors property at 953 was in fact 20' at the time. Since that time it is obvious that at some point in time between now and then that these same neighbors acquire 10' of passageway. I am respectfully asking the Committee to allow me the same courtesy of acquiring the other 10' of that passageway that directly abuts my property." Now this was false and misleading information that was presented to the Community Improvement Committee by the petitioner. Now I also heard just a minute ago from Director Thomas that, in fact, 10' of land was acquired in 1961. Now I have the deed with me dated December 7, 1961, the original deed that was granted by Mr. Desrochers to my parents and it comes with the dimensions of my property. It does not give any additional 10' of property. It gives the strict dimensions of the property. Nowhere from that point in time until today have we acquired any additional passageway or additional parcel of land. When I heard Mr. Thomas mention that fact, I have the original deed that states nothing along those lines. There was no legal documentation provided by the presenter to support this inaccuracy. Again, ownership of 953 Union Street has been in my family for over 40 years and our deed, as I said, clearly states what we own and the boundaries of our property, which match the tax maps. We have no addendum or separate deeds, nor have we acquired additional footage. Now I also point on Page 7 of your package to the letter addressed to the Community Improvement Committee from Frank Thomas, Public Works Director, dated 9/27. I reference his last bullet item that states "a sewer line crossing a part of the area of the petition also crosses the Draper property. No written easement was found for the sewer line despite having been installed in 1921." That comes from Frank Thomas directly. Surely if my parents or previous owners of our property had received additional land from the City, easement rights or a transfer of ownership would have been legally recorded. Now this so-called memo only map, which is found on Page 6 of your package has no title or date and is not a legal document for consideration. This is only a Public Works map intended to track the sewer lines, not property or right-of-way lines. However, it does illustrate a couple of items that I wish to highlight to the Board to consider. First, the map clearly shows the extension of a building sitting on the area of what Mr. Draper describes as his fact in proof the existence of a 20' right-of-way. However, I ask the Board to contemplate how could a

building sit on a right-of-way? It cannot. It can only be on privately owned land. Second, you will notice that there are sewer lines that run in an east/west direction and Mr. Thomas brought that up. The petitioner references them in his letter to the City Clerk dated 12/13/05, Page 10 in the package. More importantly, they converged at a point labeled B with another sewer line that runs in a north/south direction. It is this north/south sewer line that should be the essential concern of the Board because it runs the entire length right down the middle of Union East Back Street. Now again on Page 7 of your package the letter from Frank Thomas to the Community Improvement Committee I reference his last bullet item that states “there is a sewer line crossing a part of the area of the petition that also crosses the Draper property. No written easement was found for the sewer line despite having been installed in 1921. The Highway Department supports the petition if a provision is made for a 20’ sewer drain centered on the existing pipe is provided by the owner.” This requirement poses a dilemma for the Board. First, only a small portion of the land within the petition would actually qualify for the 20’ easement. Nowhere in this package do I see legal approval for any exemption for this requirement. Second, the Board will not determine ownership of the parcel of land being petitioned, only whether the City will give up or retain its rights to it. Ownership of the land will be for the courts to decide. However, I query the Board to consider what would happen if other parties other than the petitioner were granted full or an equitable share of this parcel of land and don’t grant the easement rights to the City. I present a practical example to you of what would occur. On the Public Works map there is a manhole where the sewer lines meet at the point labeled B. That is the east/west, north/south sewage line. Biannually this manhole requires pumping and maintenance by the Highway Department personnel. In the past, access has been through our property and we would graciously make provisions for the tenants to move their vehicles with the exception of one occasion whereby a department worker caused damage to my sister’s retainage wall. Department workers have had easy access to this manhole by simply backing up their trucks to it. If you approve this petition and the petitioner is granted sole ownership of this property, I will simply advise the driver on the next occasion to gain access to the manhole through Mr. Draper’s property since it is now on his lot and he is giving you the easement rights to it to go through his property. The problem would be that Mr. Draper’s garage and fence block access to that manhole. Now if you look at the Assessor’s map on Page 5 of this package please consider the fact that an approval of this petition will set precedent and will stimulate and motivate petitions of this right-of-way. The petitioner’s request not only impacts my property but also encroaches on the interest of my sister and the neighbors on the lot labeled 310-8 and 310-24 respectively. It impacts every homeowner along the way and it definitely impacts the Highway Department. An approval of this particular petition will open a Pandora’s Box for this and future Boards. This Board would be providing evidence for future petitioners that Union East Back Street has no merit even though there is a sewer line that runs beneath it. I appeal to this Board to retain the tranquility and status quo of the area by either dismissing this petition for approval or referring it back to the Committee on Community Improvement for further investigation.

Alderman Osborne stated I have a similar situation with my backyard. I lived there for 38 years. On my deed all it states is 50' x 100' but actually my lot goes back 110' because there was a 20' alley in the back of my home at the time and it was discontinued so automatically each side took 10 feet and I have a fence on that particular line so I know what you are saying. It doesn't have to show up on a deed though unless you put it that way and you have the Registrar of Deeds register it. I would like to have Mr. Arnold's opinion. Where do we stand here, Mr. Arnold?

Thomas Arnold, Deputy City Solicitor, replied what are you asking me.

Alderman Osborne asked does this land belong to the City or doesn't it. What is your opinion?

Deputy Solicitor Arnold answered as far as I know there has never been any claim that the City actually owns this land. What the City may have in this land is the right to accept it as a public street. It is that right to accept that you would give up by discontinuing it.

Alderman Osborne asked so we are discontinuing our right to accept it. Is that what you are saying?

Deputy Solicitor Arnold answered in a nutshell yes.

Alderman Smith stated Frank if you don't mind looking at the plan there are three manholes and I guess they were put in in 1921. It must have been City property when these manholes were put in.

Mr. Thomas responded quite frankly I don't know how the sewer line was put in in 1921. We do have sewers throughout the City that run across private property that are not in formal easements that the City had obtained so to answer your question I don't know how the City was able to put in those sewers.

Alderman Smith asked then how did the owners construct garages over our...because we have had a lot of problems at Dorrs Pond and Walnut Street Extension. We have had a lot of problems with run off.

Mr. Thomas responded again we have areas like this throughout the City. Sewers were put in without the benefit of formal easements. People built structures over them. Again, it is not uncommon in the City that we have this type of situation.

Alderman Smith asked then how would you correct a problem if we have a problem with a manhole and the flow of water.

Mr. Thomas answered I have gotten rulings in the past from the City Solicitor's Office that we have a right to have that sewer there now through prescriptive use. The fact that it is there and the fact that it has been in use and in we have to get in to maintain it we have the right to go in there and maintain it. Again, this is not an unusual situation for us.

Alderman DeVries stated I would just ask you to clarify the last comment about the access to the sewer for maintenance or biannual maintenance. If one of the property owners doesn't wish to allow the easy access to his private property can that be done and what would be your remedy?

Mr. Thomas responded again what you are asking is a legal opinion that would have to be rendered by the City Solicitor's Office but in the past when we have run into situations like this we have gotten legal rulings from the City Solicitor's Office saying that we do have the right to cross over the area. In this respect the sewer runs from Union Street out to that back alley and we have the right to pass over that area of the sewer to maintain any portion of that sewer.

Alderman DeVries asked if in order to complete whatever work might be necessary to remedy the problem structures were disturbed and fences were disturbed who would be responsible for replacing those, especially if they were done without permit.

Mr. Thomas answered typically in the past we have replaced fences when we have taken them down but I am not sure if we are under any obligation to do that.

Alderman DeVries asked could you comment as well on the garage structure that has been placed over the line. Is that something that if it was built without a permit...

Mr. Thomas interjected if it was built improperly over our line and we had to do repairs under the garage in that area for some reason we would probably give notice to the property owners to remove the garage or we would remove it and probably not replace it. Again, you are asking legal questions that we would have to run by the Solicitor's Office. While I am talking though I would like to mention one thing. It was noted that the earlier deed for the Meyers property had included this 10' strip. When I was referring to our title search we went back to a deed of 1957 to when Mr. Desrochers bought the property off of Lester Burnham of Nashua. At that time or at the date of that transaction an additional 10' was not included in the deed. Somewhere after that time the Meyers wound up buying this property from the Desrochers with the 10' in it. I just wanted to clarify that point and I do have copies of the deeds going back to 1957 if anybody wants to look at them.

Alderman DeVries asked Mr. Meyers have you attempted to have any kind of legal research or property deed research done to verify some of the comments that you have made. Have you initiated that action yet?



Mr. Meyers answered no. I think maybe if you give credence to this whole situation...if I could just give a little history about this as best I know. Basically part of this comes from the Matriarch of the family who has lived through a majority of this whole incident and again I don't want Mr. Draper to appear as the villain in this case. We have had very cordial discussions about this recently. If we were to just go back Mr. Draper was correct. At one time a neighbor did install a fence on the property. The problem was this fence was installed while my family was on summer vacation. Without prior discussion or obtaining prior approval or a permit from the City an 8' stockade fence was installed to the surprise and chagrin of my family when they returned from their vacation. Now looking at the structure of the fence and the way the angle is of the property where it is exceeded 5' into the parcel of land being disputed it was my parents belief and currently ours that the northwest angle of it is actually encroached on to our 12' strip of land. Now that was raised by my parents to the previous owner at the time whereby it was meant with a simple shrug of the shoulder but times being the times they were one would not consider legal action against a neighbor so it was left to pass. What was there was there and so be it. Now a similar modus operandi occurred this past summer. Mr. Draper simply wanted to replace his fence without notifying any members of my family while my mother and sister were vacationing at the beach. They came home only to find the fence, I would say 4/5 of the fence had been completed. Having been all renewed. However, the west corner post still remains in the same spot, the new one, as the previous one. It was then asked on a third party person putting in the fence if they could remove the trees and finish off the back of the property. Well, three things were stated to my mother or by my mother. One was she doesn't own the parcel of land and those trees are not on her property nor are they on the abutter's property. They are on a third party property and we have no authority to say go ahead and cut down those trees. Second of all and most importantly what raises the shackles of my mother's irate is that the northwest post still remains on our property now. The third part was surprise here is the new fence. So it has forced us...after our last meeting here Mr. Draper and I tried to come to some kind of gentleman's agreement and we are at an impasse. Basically the impasse is Mr. Draper has advised me through his own legal counsel of what I would call squatter's rights and squatter's rights are what's there has been there for quite some time and now it is his. So what is there is there and he now maintains ownership whether that northwest post is on my property, on his property or on the parcel of land that is in question. Now he is under the belief of entitlement. He is entitled to that. Not only that, again, we were not made aware of these proceedings until we received back in November notification that Mr. Draper was trying to not only gain 5' of land but was also trying to gain the whole 10' of land. Now as I mentioned before the manhole cover. Let's say he does obtain the 10' of land. Now that manhole cover happens to be on a parcel of land, whether the City owns it or doesn't own it. Now let's say for instance for the sake of argument he does obtain all 10' of land and he does decide to fence out the full 10' which he would legally have the right to do. Nowadays some people move it in a foot but in any case it would engulf the manhole. It would now be on his property. Now, how do you gain access to that for the Highway Department? It is on his

property. Now Mr. Thomas said well he would go to the Solicitor's Office and try to get a legal ruling on such a thing because if the truck driver comes in to me and says I have to get access to that manhole. I am going to say well first of all the fence is there and second of all you have to go through the other guy's property because it is on his property. Well, there is a garage there.

Mayor Guinta stated we do have a time constraint here because we have another meeting.

Alderman Roy stated some of my earlier questions have been answered regarding the deeds and the changes and the timeframes they were made in. My gut feeling on this is that this process had taken place between 1957 and 1961 and the City just can't find its records releasing part of this roadway, which was included on your 1961 deed. My question is for the City Solicitor and I want this to be clear to all of the Aldermen here. Tom are ownership or the City's ownership or what we are doing this evening in releasing and discharging does this in any way grant property ownership rights to any one of the abutters or does that just entitle them to follow a different course of justice per say.

Deputy Solicitor Arnold answered it does not grant ownership rights. It merely disclaims any interest the City may have in putting a street on that former paper street.

Alderman Roy responded so we are crystal clear that our decision tonight in no way gives any owner any more rights than any other owner. It just removes the City from the process saying that the City will never go ahead and build a street there correct?

Deputy Solicitor Arnold replied in a nutshell.

Alderman Roy stated my final question is for Frank Thomas. The concerns over easements, access, sewer lines...a number of those properties are served by a number of small sewer lines that ran through that passageway. You are absolutely comfortable if this was to go forward or not go forward that we would have access to the infrastructure?

Mr. Thomas responded quite frankly nothing changes by the action that the Board would be taking tonight. Again, based on my 34 years in the City we have gone in and maintained the sewers that we don't have in formal easements and we have gotten rulings in the past by various City Solicitors going back many years that we have the right to go in and maintain the lines.

Alderman Lopez stated on the same line that Alderman Roy was talking about with Mr. Arnold, a compelling argument...in either case it sounds like there will probably be a civil suit in either case in the way this gentleman is speaking anyway that maybe a court of law can only solve and we can't solve. My question to you is if a civil suit goes forward do we become a party that we have to defend our position or our vote?

Deputy Solicitor Arnold responded often times in a petition to quiet title the City will be named. What we do is a matter of procedure at that point and we inquire of any of the departments that may have an interest. If we have any interest...typically what we get back is no one is interested in the property and we merely write a letter to the court saying that the City has no interest and will not appear.

Alderman Lopez asked even if there is compelling argument from one person to the other as Mr. Meyers has indicated tonight they would subpoena the City in a civil suit.

Deputy Solicitor Arnold answered I can't speak for either party. Obviously if a party issues a subpoena they are usually sent to our office and we take a look at it. Typically we don't have an objection to people appearing to testify to what they can testify to.

Alderman Lopez stated my last question to you is what happens if we just leave it the way it is and if they want to sue each other to do whatever they want to do...why do we have to...I know why we have to release it so to speak but Mr. Thomas can get in there now and it seems that we are sort of favoring one over the other when we know that there are compelling argument, at least in my viewpoint there is compelling argument. If we just leave things as they are what is the problem?

Deputy Solicitor Arnold responded this Board if it so chose could certainly either vote not to release any rights it may have or it can take no action. That is a policy decision but there is certainly nothing forcing you to take an action tonight to discontinue this particular portion of this paper street.

Alderman Lopez asked so if we decided to do that then there would be no sense in viewing the property.

Mr. Thomas stated I don't believe you have to view it again. You viewed it one time and I think that meets the requirements.

Alderman Lopez asked were the other Aldermen on board.

Alderman Roy stated I would ask my colleagues...what we are looking at this evening is not whether one abutter is correct or the other abutter is correct. I am at a dilemma where I have two great constituents who have differing opinions over a piece of land. The only thing that is certain in this is that the City should not be involved. This is a piece of property that for no other reason than it was laid out in the late 1800's that the City is involved. I don't know if Frank Thomas wants to speak to that but as far as ownership and trees and fences and access those are all things that this Board, the City and this government should not be involved in. These are private property ownership rights and we need to step away from this.

Whether it sets a precedent for other abutters to the Union East Back passageway then that is something that this Board should also identify in the next few months but we should not be part of this. It is very hard for me to make this decision because in some things both of them are very correct. In others I disagree but it is a private matter between two abutters. We are only there because we show up on deeds as a City passageway and we need to get the City out of these properties throughout the City.

Alderman Osborne stated I wanted to bring up a couple of points. When I mentioned my property also isn't there a cemetery brook running right under there Mr. Thomas?

Mr. Thomas responded yes.

Alderman Osborne stated we have a cemetery brook running all the way from the Elliot Hospital down to my property and it is underneath homes and everything else. So if anything goes wrong with that then of course we have to go back there and do the same thing. Again, all we are talking about here is a discontinuance of any rights that we have anything beyond that would be a civil matter between...

Mr. Thomas interjected that is correct. We are just releasing.

Mayor Guinta asked is there a motion.

Alderman Roy moved to release and discharge Union East Back Street retaining any and all utility easements. Alderman Duval duly seconded the motion.

Deputy City Clerk Johnson stated I would ask that the motion read to discontinue based on the fact that it is considered a dedication.

Alderman Roy amended the motion to discontinue a portion of Union East Back Street. Alderman Duval duly seconded the motion.

Alderman Long asked do we need to visit the property to make that motion.

Mayor Guinta answered I believe we do not because...

Deputy City Clerk Johnson interjected the law requires that you view the property and it is my understanding that the Solicitor has ruled you have already viewed it.

Alderman Lopez stated I don't think two Aldermen have.

Alderman Long stated we haven't. We weren't on the Board at that time.

Deputy City Clerk Johnson replied we have arranged that the Board can or cannot. It is really up to the Board and I guess the two that did not can recuse themselves if they wish.

Alderman Long stated I will recuse myself.

Alderman Smith stated I just want to get this clear. We can go in there at any time and it won't make a difference between the two individuals. Is that what you are saying to us?

Mr. Thomas responded in the past we have never had a problem. We have had rulings. If we are restricted from going into this particular area we would then go and see the City Solicitor and get an official ruling and take whatever action we ended.

Alderman Smith asked the only reason I am following up is as you well know that line involves quite a few homes up in that area.

Mr. Thomas answered that is correct and I think that would be part of the reason we would have rights to go in and maintain it because there would be a public good. It is a public line that has been in there since before most of those houses were in there.

Alderman Forest stated I have one question for clarification. If we discontinue this the property owners can still continue with whatever lawsuits or civil action they are doing. It is not going to interfere with that.

Mr. Thomas responded that is correct.

Alderman Forest stated so Mr. Meyers and Mr. Draper can still go to court and then get a court ruling as to where the fence should be or not correct.

Mr. Thomas replied correct.

Mayor Guinta called for a vote on the motion to discontinue a portion of Union East Back Street reserving any and all utility easements. The motion carried with Aldermen Long recorded as abstaining.

Mayor Guinta advised that a motion is in order to recess the hearing and proceed to view the areas of petitions presented.

Mayor Guinta called the meeting back to order at the site of the first petition.

**Item 4A.**     *Petition to layout a portion of Lewis Street*

Present at the site were: Mayor Guinta; Aldermen Roy, Gatsas, Long, Duval, Osborne, Pinard, Shea, DeVries, Garrity, Smith, Thibault, Forest, and Lopez

Absent were: Aldermen O'Neil

Mayor Guinta requested Mr. Thomas to address the Board regarding the petition.

Mr. Thomas again explained the area of the petition requested to be laid out.

Mayor Guinta asked for a motion.

Alderman Smith moved to grant the petition to lay out Lewis Street as presented. Alderman Lopez duly seconded the motion.

Assistant City Solicitor Arnold stated that normally when there is this type of petition it's approved subject to both abutters executing written waivers of damages acceptable to the City Solicitor's Office, but I was told prior to coming out from Mr. Lazos that one of the abutters will not sign off on the waiver.

Alderman Duval asked if there was any exposure to the City.

Assistant City Solicitor Arnold stated in taking people's land there is always some type of exposure but I can't tell you what the City exposure is in cost. It was laid out in 64 and it has been twenty years prior to 69 so that there can be prescribed rights and we can certainly make that defense.

Alderman Roy and Alderman DeVries both asked why are we doing this if we don't have the waiver.

Mr. Thomas stated that it could still be done and that if there was concern about what was stated that they could stop plowing at the end of the road.

Assistant City Solicitor Arnold stated that it could be through prescribed rights.

Attorney Lazos stated that the other abutter does not want to sign off on any waiver as the other abutter is aware that his client wants to be able to sub-divide the land.

Deputy Clerk Piecuch asked for clarification on the motion as to whether it was with a waiver or without a waiver.

Alderman Smith stated without the waiver.

The Mayor called for a vote on the motion. The motion passed, with Alderman DeVries duly recorded as opposed.

Mayor Guinta called the meeting back to order at the site of the second petition.

**Item 4B.**     *Petition to discontinue a portion of Union East Back Street*

This being a special meeting of the Board, no further business was presented and on motion of Alderman Smith, duly seconded by Alderman Duval, it was voted to adjourn.

A True Record. Attest.

City Clerk